

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ODALIS M. HERNANDEZ ROMERO,

Civil Action File No.

Plaintiff,

v.

WAL-MART ASSOCIATES, INC.,
WAL-MART STORES EAST, LP,
WALMART INC. and JOHN DOES 1-2,

Defendants.

NOTICE OF REMOVAL

COME NOW WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP, and WALMART INC., named Defendants in the above-captioned matter, by and through their counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendants WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP and WALMART INC. in the State Court of DeKalb County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 21A03103. Plaintiff's claims against Defendants include claims of negligence.

2.

Plaintiff filed the Complaint on or about June 29, 2021. Defendants WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP and WALMART INC. received service of summons and a copy of the Complaint on July 7, 2021. Defendants WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP and WALMART INC. file this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant Wal-Mart Associates, Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant Wal-Mart Associates, Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for Wal-Mart Associates, Inc. is 708 SW 8th Street, Bentonville, AR 72716.

4.

Defendant WAL-MART STORES EAST, LP is a Delaware limited partnership, of which WSE Management, LLC is the only general partner, and WSE Investment, LLC is the only limited partner. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC, and the sole member of

Wal-Mart Stores East, LLC is Walmart Inc. Walmart Inc. is a Delaware corporation with its principal place of business in the State of Arkansas, and it was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of this lawsuit or at any time thereafter. The principal place of business for all entities mentioned in this paragraph is 708 SW 8th Street, Bentonville, AR 72716.

5.

Defendant Walmart Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant Walmart Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for Walmart Inc. is 708 SW 8th Street, Bentonville, AR 72716.

6.

Odalis M. Hernandez Romero is a citizen of the State of Georgia.

7.

The citizenship of the fictitious John Does 1-2 is disregarded for purposes of determining jurisdiction. 28 U.S.C. § 1441(a).

8.

Complete diversity of citizenship exists between Plaintiff and Defendants.

9.

Plaintiff claims bodily injuries, pain and suffering, past medical expenses in excess of \$36,727.50, future medical expenses, lost wages of at least \$28,800, and seeks punitive damages (see Complaint paragraphs 17, 28, 38 and ad damnum). The amount in controversy, exclusive of interest and costs, exceeds \$75,000. See Hickerson v. Enter. Leasing Co. of Ga., LLC, 818 F. App'x 880, 883 (11th Cir. 2020) (affirming district court's use of judicial experience and common sense to find amount in controversy was met where the plaintiff had incurred only \$25,000 in medical expenses but sought additional unspecified damages for "serious and long lasting" injuries); Hoskins v. Wal-Mart Stores East, LP, 1:21-CV-00249-ELR (remand denied with \$49,319 in medicals); Devezin v. Wal-Mart Stores East, L.P., Case No. 1:14-CV-03721-CAP, slip op. at 2-3 (N.D. Ga. Feb. 20, 2015) (finding amount in controversy satisfied where the plaintiff suffered "serious injuries[]" incurred \$30,000.00 in past medical expenses, and sought additional compensation for future medical expenses, and pain and suffering); Peters v. Wal-Mart Stores East, L.P., No. 1:13-CV-76 (WLS), 2013 WL 4647379, at *2-3 (M.D. Ga. Aug. 29, 2013) (finding amount in controversy was met where the plaintiff had incurred only \$16,522.25 in medical expenses at the time she filed her complaint, but sought additional compensation for "permanent" injuries as well as for "future medical expenses, pain and suffering"); Hart v. Wal-

Mart Stores East, LP, 1:21-CV-01240-SDG (remand denied with \$49,215 in medicals).

10.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendants.

11.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendants have attached as Exhibit "A" copies of all the pleadings that were provided to and served upon Defendants, including copies of all pleadings that have been filed to date in the State Court of DeKalb County, Georgia for the above-styled case.

12.

Pursuant to 28 U.S.C. § 1446, Defendants are not required to file a removal bond.

13.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

14.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of DeKalb County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendants WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP and WALMART INC. pray that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

McLAIN & MERRITT, P.C.

/s/ Howard M. Lessinger
Howard M. Lessinger
Georgia State Bar No. 447088

/s/ Jennie Rogers
Jennie Rogers
Georgia Bar No. 612725
Attorneys for Defendants
WAL-MART ASSOCIATES, INC.
WAL-MART STORES EAST, LP
WALMART INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 266-9171
(404) 365-4514
(404) 364-3138 (Fax)
hlessinger@mmatllaw.com

The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Howard M. Lessinger
Howard M. Lessinger

CERTIFICATE OF SERVICE

This is to certify that on July 10, 2021, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

/s/ Howard M. Lessinger

Howard M. Lessinger
Georgia State Bar No. 447088
Attorneys for Defendants
WAL-MART ASSOCIATES, INC.
WAL-MART STORES EAST, LP
WALMART INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 365-4514
hlessinger@mmatllaw.com